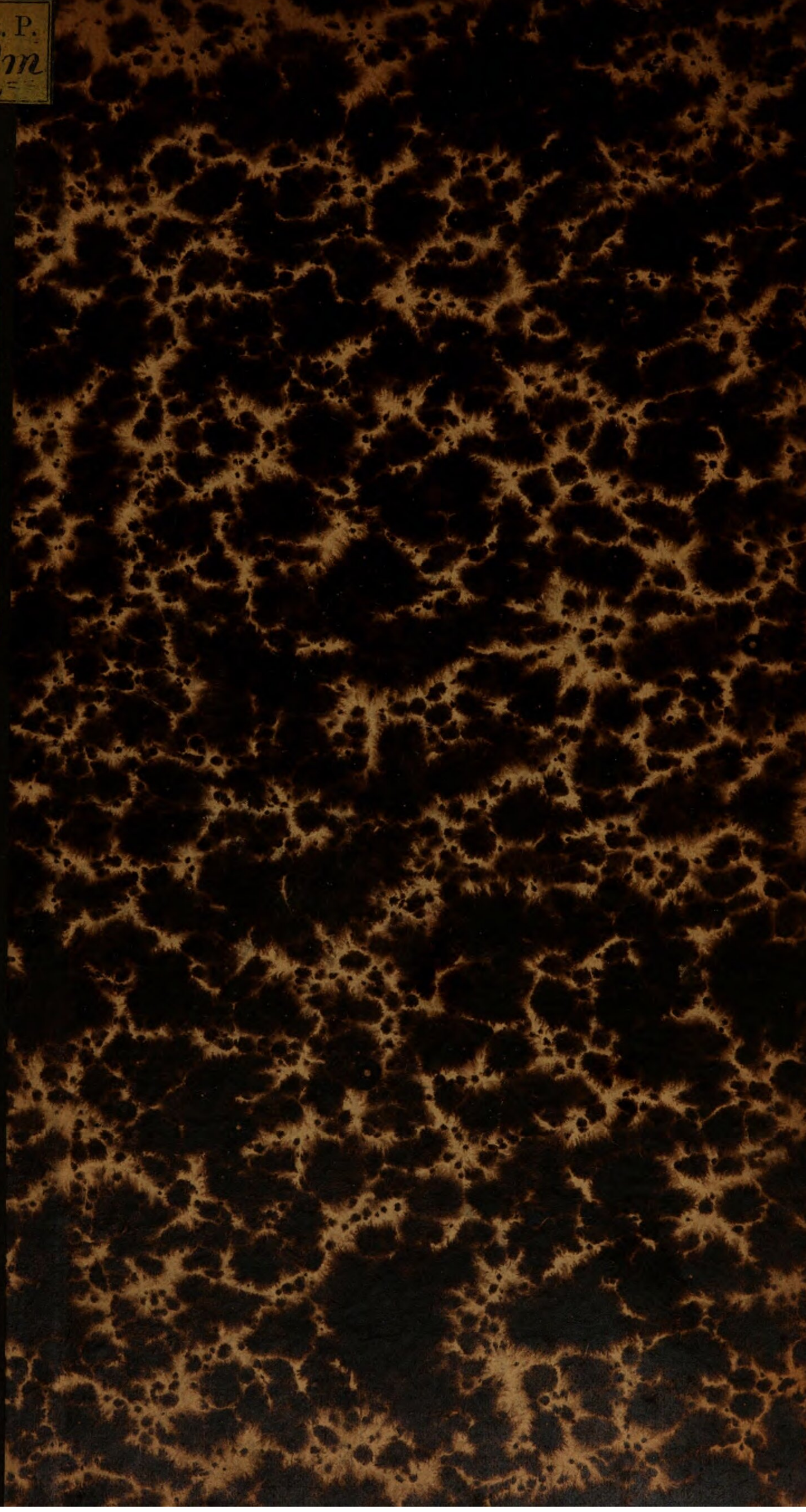


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Britton

THE
Rights of Literature;

OR,

AN AUTHOR'S APPEAL

TO

THE LEGISLATURE.

T

London :

PRINTED FOR THE AUTHOR;

By A. J. Walpy, Cooke's Court, Chancery Lane.

AND SOLD BY

LONGMAN, HURST, REES, ORME, AND BROWN,
PATERNOSTER ROW.

1814.

Price Three Shillings.

H. lit. P. 72 m

Britton

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THE
Rights of Literature;

OR

AN INQUIRY INTO THE POLICY AND JUSTICE OF THE
CLAIMS OF CERTAIN

PUBLIC LIBRARIES

ON ALL THE

PUBLISHERS AND AUTHORS

OF THE UNITED KINGDOM,

FOR ELEVEN COPIES, ON THE BEST PAPER, OF
EVERY NEW PUBLICATION.

R

BY JOHN BRITTON, F. S. A.

“ Why is it that Authors, of all other persons, who confer upon their Country the most *lasting honor* and the most *permanent benefit*, should be the only ones to whom the State denies a fee-simple in the produce of their own industry?”

Quarterly Review, v. 93.

London :

PRINTED FOR THE AUTHOR ;

BY A. J. VALPY, TOOKE'S COURT, CHANCERY LANE:

AND SOLD BY

LONGMAN, HURST, REES, ORME, AND BROWN,

PATER NOSTER ROW.

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PATERNOSTER ROW.

1814.

TO

THE RIGHT HONORABLE

HENRY RICHARD FOX (*VASSAL*)

LORD HOLLAND,

Who has manifested, on many occasions, a laudable and liberal regard to the interests of *British Legislation, Literature, and Science*, this Essay is respectfully inscribed by

THE AUTHOR.

London, Feb. 1814.

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PREFACE.

LORD Dreghorn, in his dissertation "*On the Nature and Origin of Literary Property*,"¹ observes, that several acute and ingenious essays have been written on the subject; none of which, however, appear to be the "spontaneous productions of *authors*, zealous to assert their *injured rights*; but the labored efforts of gentlemen, learned in the law, employed, or importuned to compose them." The same observation is made at the present day, and on the subject now in dispute. Hence it is erroneously inferred, that authors are exempted from all participation in the *property* of literature; and that the present is merely a question of "loss and gain," or a contest between *rich Bibliopolists* and *opulent Universities*. It will not be difficult, however, to shew, that the booksellers are merely the ostensible and prominent actors; for it will be found that the writers behind the scenes, and the audience before the curtain, are materially implicated and concerned in the drama, and must be essentially interested at the fall of the curtain. The demand of eleven public libraries, for eleven copies, or complete sets of every new publication, *gratis*, is arbitrary, unjust, and impolitic.

¹ This disquisition was originally published anonymously, in 1767; but has been reprinted, with several other miscellaneous essays, in 2 vols. 8vo. 1798. The author, Mr. Maclaren, as one of the senators of the College of Justice in Scotland, obtained the title of Lord Dreghorn.

If persisted in, its effects will be oppressive and injurious to every professional and amateur author.¹ In behalf of these, and in defence of my own property, I am therefore impelled to publish my sentiments, and appeal to the good sense and impartial judgment of every member of parliament and lover of literature; convinced, that if my arguments are as cogent as my cause is just, the appeal will not be fruitless.

In justice to myself, and to the cause herein espoused, it may be necessary for me to declare, that I am urged to the present task by my own feelings. I have neither been solicited by the booksellers, nor do I expect to derive any remuneration from them. Indeed, I cannot even hope to be repaid for the expences incurred in producing the present pamphlet. It would have afforded me much pleasure had the investigation been undertaken by one more competent to the vindication of the rights and privileges of literature:² but authors in general, I fear, have not been aware of the extent of the evil which threatens them.

Intimately connected with, and engaged in literature for the last fifteen years, I have had many opportunities of contemplating it in the aggregate, and in detail. Having made myself acquainted with its numerous ramifications and effects, I know that thousands of persons in this metropolis are dependent on it for a livelihood; and that tens of thousands are influenced in opinion and action by its precepts. The profound politician is aware that it is a powerful machine in a government, and that it has produced amazing

¹ See D'Israeli's "Calamities of Authors," a work highly ingenious and amusing; but calculated to strengthen the popular and vulgar prejudice against *poor authors*.

² Mr. Duppa, I believe, is the only author who has published his opinions on the subject. His pamphlet, which certainly contains much ingenious reasoning, and many curious facts, applies chiefly to the perpetuity of *copy-right*.

effects in the civilized world. If he be as liberal as he is profound, he will guard its independence, and promote its prosperity. A free country, and a wise government, can never fear *public investigation*, but, on the contrary, must respect it for its utility and political advantages. In proportion as this is restrained or extended, will be the degradation or prosperity of a nation; for Lord Bacon justly asserts, that "*knowledge is power*." Whilst every species of tyranny is calculated to debase man, a free and enlightened press must promote his happiness and increase his wisdom. In tracing the history of the civilized world, we shall find abundant illustrations of these maxims. Loving literature myself, I am persuaded that all mankind would equally admire it, were they conscious of the numerous advantages and pleasures that result from judicious reading and study.

In the course of the following Essay eleven public libraries are generally alluded to as the claimants; as the parties urging and demanding the presentation books: but it should be clearly understood, that the *University of Cambridge*, at the instigation of *Mr. Christian*, the *Professor of Laws*, has been the litigator of the present question.

* * * *At the end of this Essay will be found a list of several Essays and Pamphlets on the subject of copy-right, literary property, &c.*

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Rights of Literature.

TO remove prejudice, and counteract the effects of sophistry and falsehood, is the noble and legitimate province of literature. Its rights are commensurate with genuine liberty; and whatever infringes on the one must deteriorate the other. Under a free and liberal constitution,—where the *Bill of Rights* is

¹ However a term may be misapplied, or perverted, it still retains its legitimate signification: although the word *Rights* has been abused by unprincipled authors, yet it is dear to Englishmen, for it refers them to the title of a public record, which guarantees their most important constitutional blessing. Had not the *Bill of Rights* been fully and firmly established in England, we might have been slaves at this moment,—we might have toiled through a life of ignominy and oppression, and died in moral degradation and obscurity. Let us therefore cherish this truly British attribute; and whilst we move and think under its protection, let us use it with freedom, but not with licentiousness: let us rationally enjoy, but not abuse it.

the basis of jurisprudence,—it becomes the imperious duty of Englishmen to resist every attack on their natural and chartered privileges, and to guard their rights with determined and unceasing vigilance. Freedom of discussion, and latitude of investigation, are calculated to generate much moral and political good; and when honestly exerted, must be productive of beneficial results.

To literature we are indebted for many and very valuable blessings: it is the safeguard and bulwark of liberty, and the grand spring of moral and intellectual excellence. Through its influence man is elevated high in the scale of mental dignity;—is qualified to trace the progress and revolutions of the planetary system, and to estimate the properties and contents of the terrestrial globe. It is the storehouse of wisdom, and from its exhaustless treasures mankind are enriched, delighted, and improved. Since its advantages are so transcendant and universal, let it not be said, that the English legislature will sanction its oppression, or be instrumental to its debasement. The time is arrived when the vigilance of parliament is imperiously demanded on this subject: when its impar-

tiality and wisdom are to be exercised on a bill, which will materially affect the Rights of Literature. Let us hope that every enlightened legislator will fully and candidly examine the justice and policy of the subject, so that a statute may be framed which shall at once be found fundamentally sound for its equity, and amply adapted to the present state of science and civilization.

On the first institution of society it became a moral obligation, "*that no one should intrude upon the possession of another:*" and the inviolability of private property formed a primordial basis of right and justice. As such a distinction was necessary to the preservation of the common peace, it has been confirmed by legislative enactments; and to no kind of property is the claim of the possessor more strong and indubitable than that of an author to the labor of his mind.¹ This is de-

¹ "An author's right has all the foundation in nature which any kind of property can have, and more than belongs to many kinds, which are however admitted without dispute."—*William Enfield, LL.D. Observations on Literary Property*, 4to. 1774.

"Authors are not to be denied a free participation of the common rights of mankind; and their property is surely as

rived from no questionable inheritance, nor is it the effect of adventitious occupancy; it is neither found nor purchased; the tenure is original, clear, undeniable, and paramount; for it is founded on *creation*. Nothing can weaken an author's title, nor can any individual ask a participation; to the general welfare alone is he required to relinquish one atom of this possession. But, within a short period, a requisition has been made, marked with strong and peculiar features, materially encroaching on these rights. Eleven opulent public establishments have demanded from the authors and publishers of all books an equal number of the best and most costly copies, as a gratuitous privilege. For this procedure they

sacred and deserving protection as that of any other subject."
—*Lord Lyttleton's Speech in the House of Lords, 1774.*

"I confess I do not know, nor can I comprehend, any property more emphatically a man's own, nay, more incapable of being mistaken, than his literary property."—*Justice Aston.*

In the cause, *Millar v. Taylor*, argued in the court of King's Bench, 1768, it was decided that authors had a common law-right in their publications, independently of the statute of the 8th of Anne; Dunning, Thurlow, and Blackstone were counsel in this cause. The same opinion was held by a majority of the judges, when the question came before the House of Lords, in 1774.

plead the advancement of learning as their motive, and produce, as their warrant, a statute which for nearly a century had lain inoperative, and void.¹ Opposed to such requisition, the community of publishers have risen *en masse*, and at once dispute the pretensions and deny the right of the claimants. The case is at issue before the legislature of the nation, and remains to be determined by its decision. As the Universities have advanced no convincing reasons why this claim should be complied with ; as they have neither shewn that it would be beneficial to society, or morally proper, I feel it a duty to protest against its legitimacy.

Differing most essentially from the opinion of Lord Camden,² I must nevertheless consider the cause of Authors, disjunctive from that of Booksellers ; I would separate genius from trade, the produce of the mind from mere manual labour, or the acquisition of wealth ; and plead for that attribute which

¹ *Inoperative*, so far as regards the *present* requisition of the Universities.

² Who said " Booksellers are the monopolizers of letters and the extinguishers of genius." Speech in the House of Lords 1774.

has given man such magical dominion over the passions, which has almost made “the marble speak, and the brook murmur down the painted landscape,” which has often prolonged the date of civil liberty, disarmed the hand of power, and decided the fate of civil institutions: but as they are classed together by statutes, I must so consider them, and recognize their interests conjoint, co-extensive, and co-equal.

For the purpose of elucidating the subject fully and completely, and to furnish the reader with an ample and clear account of the question, I shall take a short view of, and make extracts from such acts of parliament as have passed relating to copy-right and the presentation of copies.

Licensing Act of Charles II.—It is almost needless to remark, that the reign of the Second Charles was characterized by the germination and growth of all the worst qualities of licentiousness and fanaticism. Which should be the least tolerant, seemed a struggle of the king with the clergy, and the palm of debauchery was contested by the monarch and the court. But though corruption was the morality of Charles, and bigotry the reli-

gion of his priests, all public virtue had not expired during the night of the Revolution. The "thinking few" saw that the vices of the throne threatened the demoralization of the people, and prepared to avert the danger by giving vent to the streams of literature, and spreading her hallowed waters to the remotest corners of the country. The creatures of the court, though dead to the sentiments of true honor and genuine glory, were keenly alive to the selfish feelings of vicious pleasure. They dreaded the majestic tide of religion and philosophy, and trembled at the pungent current of ridicule and satire. They determined, therefore, to diminish their flow by narrowing their channel of egress; in fine, to cramp the energies of the press, which they well knew to be the most powerful engine human invention had hitherto furnished for the dissemination of morality and truth. The *licensing act*¹ was framed for this very object, and unhappily effected the most ardent hopes of its supporters. By this statute, the printing of any book, not previously licensed from agents of

¹ 13 & 14 Car. II. c. 33. 1662.

the throne,¹ and entered in the register at Stationers Hall, was prohibited under numerous and severe penalties. The minions of power were authorized to enter at discretion all houses at all times, where obnoxious publications were supposed to exist, and were commissioned to destroy every book not teeming with the immorality of Buckingham, or the bigotry of York.² Unfortunately for the court, the Star Chamber was abolished, and the paralyzing powers of an *ex-officio* information had not yet emerged from obscurity into favor, or means more effective might have been adopted to silence the voice of indignant truth.³

¹ "That all books concerning the common laws of this realm shall be printed by the special allowance of the *Lord Chancellor* or *Lord Keeper* of the great seal of *England*, for the time being, the *Lord Chief Justices* and the *Lord Chief Baron*: and that all books of history concerning the state of this realm, or other books concerning any affairs of state, shall be licensed by the principal Secretaries of State for the time being; books on Heraldry, by the Earl Marshal; on Divinity, Physic, Philosophy, Science, or Art, by the Archbishop of Canterbury, or Bishop of London." *Section 3.*

² Afterwards James II.

³ The provision of Charles may be illustrated by comparing it with that arbitrary decree of a neighbouring monarch, which has lately excited public attention, from its severity towards the production of a celebrated female writer. The

That after the license and before publication, the patriotism of the printer might not alter his book, he was compelled to deposit three copies, thus *licensed and entered*, severally in the libraries of Oxford, and Cambridge, and the King. The intention of this provision is by no means obscure or equivocal. The statute was enacted to restrain seditious, heretical, and blasphemous books, and the *license* was the testimonial of their loyalty and orthodoxy. The *entry* was to shew in whom the property was vested, that is, who were answerable for any violations of the statute. The *delivery* of the copies, that there might be something wherewith to compare each work in the various stages of its progress to the world. This was the standard, by which the book licensed, entered, printed, and published, was to be collated and examined. Why those particular libraries were selected, may be very easily demonstrated. Oxford and Cambridge were at that time under the immediate con-

“*décret sur la liberté de la presse*” is similar in its nature, and tends to the same end as the *licensing act of Charles II.* Vide *De L'Allemagne*, par Mad. La Baronne de Staël Holstein, préf. tom. 1,

trol of the church, and publications of a religious and controversial nature would there be more strictly perused than at any other place. The King's library was under the inspection of the minions of the throne, and strictures upon court morals would not there pass unscrutinized. I conceive this to be a fair and rational exposition of the motives and intentions of the statute. There is nothing like encouragement of learning to be found in it, either as a whole, or in particulars. Yet from this act, do the Universities deduce their claim to copies of all publications :^{*} though such was the opinion entertained of the injustice and severity of its enactments, that even the unprincipled and venal ministers of Charles dared not to prolong its duration, so that after a lingering existence of a few years, it expired. From that period to the end of the reign, no copies were given to the Universities ; a circumstance

^{*} *Professor Christian*, the strongest and chief advocate of the claimants, speaking of this act, observes, "the donation of books had drawn the particular attention, and had received the marked approbation, of the legislature at the time." *Vindication*, p. 19, et seq.

which very strongly invalidates a chief position of the claimants, that *ab initio* the advancement of learning was the motive for the enactment, respecting the donation of copies. But such could not have been originally the object here, or most indubitably the legislature would have expressly commanded their delivery in a new statute, or at least have continued in force the provision, which awarded them in the old.¹ Failing to do this, without any palpable or suggested reason for the omission, it may be fairly inferred, that no idea of the kind was entertained by the framers of the law. Nor is it a matter of probability, that the king, who sold his country, and became the pensioner of a foreign power, or the ministers who patronized an Oates and a Bedloe, or the parliament which murdered a Russell and a Sidney, materially cared for learning, when they had trampled on the interests of justice, and contemned the institutes of God !

¹ Mr. Brougham, in his powerful and able argument on the hearing of the special case, Cambridge University v. Bryer, held a similar opinion as to the object of the statutes. See report of the case, p. 14.

Licensing Act revived by James II.—Under the despotic reign of that monarch, the destruction of every thing good seemed a precept as obligatory as the destruction of an Infidel to a Turk. The strongest pulse of his heart beat to strangle the organ of opinion, and no means were so adequate as the buried statute of his predecessor. With the revival of that act, in 1685, revived what Mr. Christian may term, *regard for the interests of learning*; for it brought with it the delivery of the copies as before. James was wholly insensible to genius: the tyrant gloried in his tyranny. But the throne of despotism, like the fabric in the fable, stood on a sandy base; it fell, and buried the proud incumbent in a waste of ruin. The statute expired in 1694.

The liberal mind of William found no pleasure in the debaucheries of Charles, nor satisfaction in the intolerance of James, and with many others, this law was blotted from the statute book. Learning revived and knowledge expanded; talents found patronage with a generous monarch, and the labors of genius were protected and rewarded. But no coercive statutes re-

quired the delivery of copies, as in the former reigns, and the charge cannot be advanced, that learning had no encouragement from the throne. Literature, indeed, assumed a new aspect, and many publishers acquired property and respectability. Some dishonorable and dishonest persons, however, among the trade invaded the rights of others, by pirating some of their best and most popular works. The respectable booksellers petitioned parliament for redress: but there being no statutory provision applicable to the case, no remedy could be immediately granted. As the evil increased, it became necessary to apply to the legislature for a specific act of parliament; but some years elapsed before the act of 8th of Anne was passed. This gave the publishers a remedy against piracy; but, for the purpose of recovering penalties, it was required that nine copies of every new book should be delivered to the Stationers' Hall.

Such was the sentiment entertained at that time by all the parties concerned, and such was the motive which regulated their actions. The publishers delivered the required copies of every entered book, and of those not entered the Universities never made a demand.

At this period, the tax upon paper, with the price of labor and materials, were far less than at present. The works published were common in their execution, and generally unadorned with plates. The cost of the nine copies, therefore, was an object of little moment; and as the trifling expense of publication left them open to piracy, it was a matter of policy to register all books in order to secure the penalties. But in process of time, the increase of taxes, and the greater expense of materials and labor, united to the improvement in the style of publishing, by rendering books more costly, lessened the danger of illegal reprinting, and publishers forbore to enter their books, and thereby subject themselves to the delivery of the copies, without having on their part any commensurate benefit. † Some works, however, notwithstanding their costliness were pirated; and publishers to save the statute, but avoid the condition, resorted to a measure, which

† “Until the late decision of Lord Ellenborough, we did not think the penalty of *one penny per sheet* sufficient, and therefore did not send the copies.” Mr. Parry’s Evidence. Vide “Minutes of Evidence before the Committee of the House of Commons.” p. 1.

an neither be supported nor admired, of entering merely the title of a number, or a volume, and delivering copies only of such number or volume. This was a petty and shameful evasion of the act. Such frauds, however, could not last long, and the act of 15 Geo. III. compelled the publishers, if they expected to recover the penalty, to enter *all* the volumes and deliver complete sets of every *work* entered at Stationers' Hall.

When the disorganizing principles of the French Revolution began to infect the populace of this country, by exciting similar insubordination, a *third statute* was enacted in the 39th year of George III. one clause of which requires that the printer's name shall appear in the title-page of every book printed by him, and one copy be retained in his own possession. The reason of this is clear and just. Treasonable and libellous publications were inundating the country, to the subversion of order, and the ruin of character; and as they were anonymous, neither government nor individuals could easily obtain a remedy for sedition or libel. By affixing the printer's name he would become responsible for the author, and by the retention of a

copy, it might be always forthcoming, as evidence, either for or against himself. This most strikingly evinces that none but registered books, were conceived by the framers of this act, as liable to the demand in question; for if they were, then this provision was *prima facie* useless and surplusage. Where could be the reason of a provision like this, for preserving one copy of a book, of which by former statutes nine copies were required to be preserved?

The next statute on the subject is that of 41 George III. which extends the number of *presented* copies from nine to eleven, and expressly says, that none but *entered* books come within the limitations of the act.

Such is the history of literary property as affecting the present question; and from this it is conceived that the following inference is natural and just; that from the first, the mere delivery of the copies had no connection with learning. Under Charles, it was the effect of arbitrary prerogative: under Anne, nothing more than a grant in lieu of presumed privileges. On the last mentioned statute the Universities more particularly

rest their claim, and under it I shall endeavour to prove that neither the parliament—nor the Universities—nor the publishers—nor the public have hitherto acknowledged any liability to deliver copies of *unregistered* books; that succeeding acts, by continuing the same interpretation, rendered it less questionable, by being more explicit, and giving to what was admitted before, the stamp of certainty. The conduct of the Universities, however, affords the most conclusive evidence; which is, that from the year in which the act of Anne was passed till 1810, a period of one hundred years, they never enforced any demand against the publishers for the specified copies.¹ If they possessed this un-

¹ Mr. Christian says,—“*till 1798 the University of Cambridge has received every valuable work due.*” This assertion is disproved by the testimony of a gentleman who ought to know better than Mr. C. “*Since books were first printed in England none of the libraries have ever enjoyed the privilege now contended for, and yet the cause of learning has continued to advance, and the libraries to increase.*” J. G. Cockrane. “The case stated between the public libraries and the booksellers,” p. 17, 1813. On looking over the registers at Stationers’-Hall, it appears that of 447 books, published in 1797, only 68 were entered and delivered, and these were principally pamphlets and plays: and from 1767 to 1773, in no one year were there more than

controvertible right in the case of *all books*, registered or not, how could they reconcile it with that mighty regard they profess for the interests of learning, to suffer it to remain dormant for more than a century?

Bishop Law was the first to agitate the present question, and call on the University of Cambridge to enforce the presentation of all new books.¹ He admitted, however, that the Act of Anne was not sufficiently perspicuous: and says, "One would rather wish and hope for an explanation or amendment of it, than allow such interpretations to take place, as leave room for all the abuses, and all the *veracious law-suits* that will of course arise from them."

Basil Montagu, in the year 1805, addressed a pamphlet to the University of Cambridge, and endeavoured to prove the existence of a right in the universities to copies of *all books*.

This pamphlet was succeeded by another from *Edward Christian*, professor of Common Law at Cambridge, whose object was of

76 books entered and delivered, and these were of a similar kind.

¹ "Observations occasioned by the contest about literary property." Camb. 1770.

a similar nature; and, conjointly, they succeeded in obtaining a trial before the judges. The printer¹ of *Haywood's Vindication of Fox's Life of James II.* resisting the demand of the University of Cambridge to a copy of the work (on the ground of its not having been entered at Stationers' Hall) they brought an action on the statute of Anne, and obtained a judgment in their favor. The decision of the judges of the King's Bench has gone directly to destroy the construction which the members of the law, a succession of parliaments, the universities, the publishers and the world, had, almost without exception, previously given to that statute.

The maxim of the law is, *legis constructio non facit injuriam*; but such is the injury resulting from this unexpected determination of the Court of King's Bench,—so greatly do the immediate results militate against the interests of literature, both as a liberal art and a

¹ Henry Bryer. The cause was tried before Lord Ellenborough and a special jury, at Guildhall, at the sittings after Michaelmas term, 1811, when a verdict was found for the plaintiffs, subject to the opinion of the Court of King's Bench, on a case made and submitted. The case was argued at Michaelmas, 1812, and the judges confirmed the verdict of the jury.

trade,—that the injured persons have deemed it requisite to appeal from its decision to the wisdom of parliament. They have besought the repeal of a statute, by which, according to the new construction, their rights are invaded, and their property held by no certain tenure. Against this petition the University of Glasgow has presented a Memorial, and the papers having been submitted to a Committee of the House of Commons, the ensuing session of the legislature (1814) is fixed upon for its consideration.

It will be necessary now to shew that the community of publishing proprietors deserve the favorable interference of parliament; and I apprehend that the few rational truths hereafter submitted, will effectually convince every impartial reader.

“The claim or rights of these libraries depends entirely upon the true construction of the 5th section of the statute of 8 Anne, c. 19.”

This is the introductory paragraph of Mr.

Sir Egerton Brydges, one of the members of the committee, gave notice, that, soon after the present recess of parliament, a report of the committee would be submitted to the house, on the question.

Christian's "Examination;" and with some qualification I am willing to abide by it as a governing principle. So far as their claim is derivable from law, I admit it is dependent on the statute of Anne; but there are other rights than those directly derived from law, more obvious and important, flowing from the superior sources of God and nature, confirmed by reason, and necessary to justice. These are the rights which laws often interfere to perplex and impair, but which it is beyond their ability to destroy. Admitting this paramount superiority of *original right*, of just, equitable, and moral right, the claim of the universities ought not to be sanctioned; for it operates to injure those genuine and undeniable prerogatives which man is by nature entitled to possess. But still weaker will appear the pretensions of the claimants, when we learn that those pretensions are not warranted even by law; for under no statute, yet adverted to, are they entitled to eleven copies of any book *not registered* at Stationers' Hall.

Among those who contend for the unconditional claim of the libraries, the most prominent is Professor Christian, who has cer-

tainly advocated the cause with considerable ingenuity; but, in my opinion, with much sophistry.

In construing the act of Anne, he necessarily refers to the preceding one of 13 and 14 Charles II. and endeavours to shew that the donation of books is derived from that statute, whether there had been an entry or not. After partially reciting the 3d and 17th sections of the act, he thus observes: "It is impossible for any one to say, that in this statute, which first gives the copies of new books, and old books with additions, the donation of the copies has any connexion whatever with the entry of them in the Stationers' register." p. 19.

Let us compare this statement with the section itself.

' And be it further ordained and enacted by the authority
' aforesaid, that no private person or persons whatsoever
' shall at any time hereafter print, or cause to be printed, any
' book or pamphlet whatsoever, unless the same book and
' pamphlet, together with all and every the titles, epistles,
' prefaces, proems, preambles, introductions, tables, dedica-
' tions, and other matters and things thereto annexed, *be first*
' *entered in the book of the register of the Company of the Sta-*
' *tioners of London, and unless the same book and pamphlet,*
' &c. shall be *first lawfully licensed and authorized to be*

‘printed by such person and persons only as shall be constituted and appointed to license the same.’

The 17th section requires that “every printer shall reserve three *printed* copies of the best and largest paper of every book, *new printed*, or reprinted by him with additions, and shall before any public vending of the said book, take them to the master of the Company of Stationers, and deliver them to him for the use,” &c.

The next legislative provision on the subject is the *statute of Anne*. In construing it, Mr. Christian is governed by the inference before examined, and finishes with the observation, that this act has given the public libraries the required copies with equal clearness and precision, and “in the same terms, and with the same public spirit for the *encouragement of learning*!”

This statute was enacted at the *request* of the publishers, to *secure* a property which was already theirs by common law. Lest, however, any person should violate the rights of the proprietors through ignorance, the legislature wisely required that some public record should be made, at Stationers’ Hall, to show in whom the property was vested.

Sect. 2. ‘ And whereas many persons may through ignorance offend against this act, unless some provision be made, whereby the property in every such book, as is intended by this act, to be secured to the proprietor or proprietors thereof, may be ascertained, as likewise the consent of such proprietor or proprietors, for the printing or reprinting of such book or books, may from time to time be known : be it therefore further enacted by the authority aforesaid, that nothing in this act contained, shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties therein mentioned, for or by reason of the printing or reprinting of any book or books without such consent as aforesaid, unless the title to the copy of such book or books hereafter published, shall before such publication be entered in the register-book of the Company of Stationers, in such manner as hath been usual.’

Still it was optional whether any publisher would avail himself of the security or not; if he did, it was necessary that this record of property should be made before publication, with the compensative donation ; if he would not avail

Sect. 5. ‘ Provided always, and it is hereby enacted, that nine copies of each book or books, upon the best paper, that from and after the said 10th day of April 1710, shall be printed and published as aforesaid, or reprinted and published with additions, shall by the printer and printers thereof, be delivered to the warehouse-keeper of the said Company of Stationers, before such publication, made, for the use of the Royal Library (*now British Museum*), the libraries of Oxford and Cambridge, the libraries of the four universities in Scotland, the library of Sion College in Lon-

himself thereof, there certainly was no need of entry, because there was no security desired, and therefore nothing to which the condition could be attached. This was proceeding on the honorable principle of *quid pro quo*, and was just and impartial. But Mr. C. and the other advocates for the claimants say, that the section which gives the copies is to be construed singly, and unconnected with the preceding sections; but surely this distinction is not fair; nor is it legal; for the section, from the manner of its wording, cannot be construed singly, but its obligation depends entirely on all the preceding clauses.

If this section be so imperious as the claimants imply, why was it worded *printed and published as aforesaid*; for most certainly the word *aforesaid* is the veriest surplusage in

‘don, and the library commonly called the Library belonging
‘to the Faculty of Advocates at Edinburgh, respectively.’
The warehouse-keeper was required to deliver them within ten days after demand from any authorized person; and if either the warehouse-keeper, proprietor, bookseller, or printer, failed to comply with the directions of the act, each was to forfeit, besides the value of the copies, 5*l.* for every copy not delivered, to be recovered by the queen, or officers of the several libraries, with full costs.

the world, if it does not refer and apply to something described before. It is in the preceding sections that the books are spoken of, and in them alone directions are given as to the manner of publication, and therefore the word *aforesaid* must necessarily refer to the clauses which contain such directions. Now there are no directions given in the first section as to what shall be done, but only as to what *shall not be done*, so that printed and published as aforesaid can have no immediate relation therewith; its connection exists only through the medium of the intervening sections and is thereby regular, rational and right. Let us examine this chain of connection, for it will be of considerable importance that the point be settled, and that it be settled honestly and wisely. The 1st section gives an author the right to publish for a term of years, and a remedy against those who violate his right. The 2d states that this right shall be made evident to the world by the entry.* The third is an alternative

* It should be remembered that at the time this act was passed, the modes of advertising books were very limited;

for the second, that if the entry be prevented by any hindrance, an advertisement in the gazette shall be sufficient. This clause plainly implies that the entry, and presentation of books constituted the *legalized mode of advertisement*. The 4th section has been abrogated by a subsequent act of parliament. Then comes the 5th and requires “that nine copies of all books *printed and published as aforesaid*, shall be given,” &c. Surely the fact of mutual connection and dependence is obvious and imperious between the whole of these sections.

The entry was one of two requisites attached to a security, which was not obtained unless these requisites were performed. The other was the delivery of the nine copies. Would it not, then, be the extreme of injustice to require the absolute performance of this last requisite when the security was not granted, and the first not performed? And is it not the “grossest absurdity” to say

and that the presentation of a 7s. or 10s. volume, was a cheap and eligible plan of announcing it to the literati of Glasgow, Edinburgh, Oxford, Cambridge, &c. Magazines, Newspapers and Reviews were not nearly so numerous as at present; nor was it so easy to distribute those that were published, to distant parts of the country.

that such requisite (which is vitally connected with anterior ones) shall be construed singly, and independently? Most evidently it is; but, observes Mr. Christian, the fifth is utterly unconnected with all the preceding sections, except the commencing one, and then adds “the whole of the statute by this construction will be found consistent with itself.” How can it be consistent, if the second, third, and fourth sections interfere to break the chain of connection, between the first and fifth sections? How can it be consistent (as it is, if Mr. C.’s position be correct,) that the fifth should not have immediately followed the first, since the others only intervene to cloud and obscure their meaning? It has been shewn that the various sections of the act are closely dependent upon each other, and that to transpose the fifth, or subtract either of the others, would break the regularity of the whole statute, and render it equivocal and difficult of explanation.

Blackstone lays it down as a rule in the construction of statutes, that words are to be taken “in their usual, and best known signification.” Now the words, printed and

published as aforesaid, do not relate to any persons, or their rights; but clearly to some method or manner; that is, *published as aforesaid*, is the same with published in the *manner aforesaid*; and for this I have the authority of every philologist in the language,¹ and their opinions are certainly entitled to some weight. This question then presents itself, where is the manner designated? Undoubtedly not in the first section, for that is the *declaratory* part of the act, acknowledging the right of the proprietors to publish, and pointing out a remedy for any violation of that right. The other sections are *directory*, and state in what manner the publication shall be made. Hence the meaning is apparent, that, published as aforesaid, is, published as prescribed by the preceding sections.—

The advocates of the claimants from the warmest to the least enthusiastic, as well as the claimants themselves, have rested much on the *preamble* of the act, that as it professes to be for the encouragement of learning, it

“*As—in the same manner—in the manner.*”—Johnson’s Dictionary.—The same in Ash, Sheridan, Perry, &c.

therefore naturally relates to the assistance of establishments of learning. Let us look at the title and see how far it supports the assertion. “An Act for the encouragement of learning, *by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned,*” *i.e.* for 14, 21, or 28 years. This title speaks for itself, and leaves no necessity for comment: it plainly alludes to authors and publishers, without reference to Universities or libraries.

The next statute on the subject is that of 15 George III.^{*} which by its interpretation confirms the construction I have given to the statute of Anne. The 6th section, after reciting the 5th of the former, thus

^{*} This act, introduced by the great Mr. Yorke, gave the two Universities of England, the four Universities of Scotland, and the Colleges of Eton, Westminster, and Winchester, a perpetuity of copy right, in books given or bequeathed to them, and any person who violated their right was subjected to the same penalty as incurred by those who violated the copy right of an individual under the act of 8 Anne.—They were required, however, to enter such books within two months after becoming their property.—It also noticed the evasions of the former statute, and enjoined the entry of the title to the whole book, and the delivery of all the copies.

continues, “*Whereas the said provision has not proved effectual, but hath been eluded by the entry only of the title to a single volume, or of some part of such book or books so printed and published, or reprinted and republished, as aforesaid, be it enacted, &c.*” Now this is conclusive as to the opinion of the legislature, for by admitting that the entry of a single volume only compelled the delivery of that volume, it explicitly admits that if no volumes were entered, no volumes would be required to be delivered: but, contends Mr. Christian, “it does not necessarily prove that Parliament at that time was of opinion that the Universities had no right to their copies if the book was not entered.” To this I answer that if any additional evidence on that point be wanting, it is here. “*5th May, 1775. Act of Anne read,—Ordered that it be an instruction to the committee, that they have power to make provision in the said bill, for enforcing the execution of a clause in the said act which provides that the several copies of each book printed and registered under the directions of the said act, be delivered to the Warehouse-keeper of the Stationers’ Company, before publication made, for the use of the*

several libraries therein described." Journals of the House of Commons, 1775, page 351. This quotation at once manifests the legislative opinion on the statute of Anne, and at the same time decides the incorrectness of that of Mr. Christian. Mr. Montagu, however, is more guarded when he says this section does not contain any exemption from the forfeitures given by the 5th section of 8 Anne. It certainly does not contain any unconditional exemption, for from its nature, it being a declaratory statute, it would not contain such exemption; but it surely does contain by implication the most evident conditional exemption that the mind can conceive, for it says, in fact, if the entry be not made, there is no delivery incumbent. This part of the statute was enacted for the purpose of *amending* so much of the act of Anne, as relates to the delivery of books to the Universities. I submit then the impropriety of attempting to render ambiguous a provision intended to amend and clear up the ambiguity of a former statute.

We are now arrived at the last legislative ordination on this point, which is an *act of the 41st of Geo. III.* If it be possible that

any persons yet remain sceptical as to the arguments already produced, this act will dispel their doubts, by the most absolute conviction. After reciting and confirming those parts of the preceding acts, which secure the copyright to the proprietors, it extends the perpetuity of property to two Irish libraries, gives them also a right to two additional copies of printed books, and subjoins this section: § 6. " Provided also, and be it further enacted, that from and after the passing of this act, in addition to the nine copies now required by law to be delivered to the warehouse-keeper of the said Company of Stationers, of each and *every book which SHALL BE ENTERED in the register-book* of the said Company." If legislative interpretations of legislative proceedings are admitted as evidence, it follows that the constructions given by the two statutes of George III. decide the question at once, and an unqualified verdict must be given against the claims of the libraries. Mr. Christian, sensible of the accuracy of this reasoning, has recourse to a most extraordinary method of eluding its force. " I do not know," says he, " who was the composer of this statute, but I can-

not forbear suggesting, that if he was not of the profession of the law, this, if it were intended to be an interpretation, may probably be attributed to inadvertence, and to the *vulgar error* which prevailed till the case of *Beckford v. Hood*, 7 Term Reports 620, and of which he perhaps had never heard," p. 31.

The composer and introducer of this act was the Right Honorable Charles Abbot, Speaker of the House of Commons, *M. P. for the University of Oxford*; an eminent lawyer, who, in knowledge of precedents and statutes is admitted to be inferior to no jurist in the kingdom. It is not very likely that such a person would be *inadvertent* in the most important part of his legislative duty, and the attributing to him a subservience to a "vulgar error," manifests a total ignorance of his character. And what is this vulgar error? Mr. Christian thus informs us in the 29th page: "It must be admitted that the Parliament, and all the world, (a few professional men only excepted) until the year 1798, were under this error, viz. that no author had any benefit from the copy-right act," if his

¹ The name by which the act of Anne is generally known, it being the first that sanctioned *copy-right* to authors.

work was not entered at Stationers' Hall." This is indeed ludicrous as well as lamentable, that "Parliament, and all the world," were contentedly hugging themselves in a "vulgar error," whilst "a few professional men only" were enjoying the consciousness of being in the right. But how is it that Mr. Abbot, a professional man, of profound knowledge, was not included among the elected "few?" That he should be so unfortunate as to labor under the same *vulgar error*, and of the case of Beckford and Hood, *should never have heard?*

Deeming it sufficiently clear, that the public libraries have no right by statute-law to copies of unregistered books, I proceed to inquire if the privilege be derivable from any other authority. Mr. Christian contends that the libraries were entitled to it on the principle of commutation? that it was "*a small compensation for the privation of a great pre-existent right.*" This he states to have been the privilege of printing "*omnes et omnimodos libros,*" granted in the 26th year of Henry VIII. to Cambridge, and to Oxford in the 8th year of Charles I. He proceeds, "But when the copy-right act of Queen Anne gave

the author the sole right of printing and publishing his work for fourteen years, the king's grant to the universities was in effect revoked; it became therefore *reasonable and equitable* that some provision should be made for the universities, and *surely a copy of every new publication*, which gave the author a copy-right, was a cheap compensation for the right which the universities before possessed." Admitting these premises to be true, there surely can be no hesitation in agreeing to the inference. Forbearing to enter into an examination of the justice and legality of the royal grant originally, I allow that if the benefits resulting from that grant have been taken away by any subsequent statute and given to the publishers, then those publishers ought in some manner to remunerate the universities for their injury. But this statement is incorrect in the aggregate, and false in detail. The statute of Anne takes away no right from the universities; it gives no right to the publishers; its sole intention, as I said before, *was to give a copy of every new publication to the universities*. On the ground of this grant, even by Mr. C.'s statement, it does not appear that the other eight libraries have any equitable or lawful claim.

was to *secure* an antecedent right, and not to bestow an equivalent for any privilege taken from the universities. Let any one, after reading the above quotations from Mr. Christian's pamphlet, collate them with the ninth section of the act of Anne.

"Provided that nothing in this act contained shall extend, or be construed to extend, either to *prejudice* or confirm *any rights that the said universities*, or any of them, or any person or persons, *have, or claim to have, to the printing, or re-printing*, any book or copy already printed, or hereafter to be printed."

Can any thing be more plain? Yet, in the face of the letter of the act, Mr. C. asserts, that a pre-existent right of the university is revoked by it. And farther, at p. 24, after analyzing the act as far as the 6th section, he observes, "The statute contains six more short sections, but they *do not appear to affect the present question.*" How? When this clause absolutely and irremediably destroys his whole position, can it be said that it is unimportant; that it does *not affect the question?* In the course of his examination, Mr. Christian frequently refers to this pre-existent right, but he does not once name the 9th section.

The University of Glasgow, in their memorial, make this remark, "It is well known that for many years the privileges thus conferred on these libraries have been flagrantly invaded." Mr. Christian has before informed us, that until very lately the world was wholly ignorant of the existence of any unconditional right in the universities; if so, then certainly it could not have been *well known* that privileges, which were not supposed to exist, had been *flagrantly invaded*. I do not attempt to explain these contradictory declarations; but have only to observe, that where there are no privileges there can be no infringements,—where there are no rights there can be no deprivation.

There is no principle of reason which justifies the requisition, and I apprehend that whatever is found to be contrary to its institutes must be pronounced decidedly wrong. I know not why the fruits of an author's labor, or the purchased property of a bookseller, should be participated by any body of persons who experience no part of that labor, and who contribute nothing to that purchase. Every human regulation admits the morality and justice of the right of property, and any

restriction of the *jus fruendi et disponendi* is opposed to the axioms of reason and the decrees of moral obligation. It is a procedure which no man would voluntarily allow against himself, and which could not be done by him to others without violating the convictions of his own breast. The same rules apply to the universities, and the same causes prove the impropriety of their conduct. Will any one say that the right of property is sacred, that the power of its disposal is unrestricted, when a material part of it is grasped by communities who have no share in its acquisition, and no interest in its inviolability? Few will be so rash as to answer affirmatively, and all must agree, that thus circumstanced, the sacredness of private right is "an empty sound, and lives but in idea."

We are told that honorable men, that authors of liberal feeling, will cheerfully comply with the demand, and that none but sordid, mercenary wretches protest against its justice.* If the productions of learned writers were the offspring of pleasurable indolence,

* Vide Mr. Christian's pamphlet, p. 8. and Mr. Montagu, p. 6.

or the effect of magic, such observations might be sanctioned and excused; but literary works are not produced without long and painful assiduity,—without laborious and toilsome research. The object of the literary laborer is not merely glory and unsubstantial fame: if his scientific researches, or the coruscations of his wit, possess merit, they will eventually procure him the reward of fame. But this meed is slow in attainment: we must not hope to snatch the laurel, but must wait for the period of its bestowment. There are other incentives to literary exertion besides love of celebrity: surely the desire of competence is not less powerful in propelling to great endeavors.

“ Senes ut in otia tuta recedant.”

HORACE.

Lord Camden has been cited¹ to prove that authors who are actuated by any other motive than the desire of glory are “wretched scribblers for bread.” It requires, however, some-

¹ Mr. Christian, p. 12; and in p. 11 he says, “The advocates for authors urge arguments for them, which every one possessing a generous sentiment disclaims, and thinks himself disgraced by!!”

thing more than the dictum of his lordship to prove this uncharitable assertion. Look at the catalogue of those who have raised the literary character of England to almost a level with Greece and Rome, and ascertain who wrote for glory and who scribbled for bread. Where there is an individual instance of the one, there will be an hundred cases of the other; and for the solitary amateur whose brows are decked with wreaths, there are whole files of "professional authors" who have obtained more fame than fortune. I am not to be told that an author is not equally sensible to reputation, or cannot write equally well in ease and competence, as when impelled by poverty. Little will be his spirit, and weak his enthusiasm, who, when engaged on a work of magnitude and value, reflects that the only meed it will procure him is unproductive honor, that the only benefit it will give to his family will be the legacy of a precarious and at best a distant fame;¹ nor

¹ "He who engages in a laborious work which may employ his whole life, will do it with more spirit, if, besides his own glory, he thinks it may be a provision for his family."—*Justice Willes, in the case, Millar v. Taylor, 4 Burrow's Reports.*—"Will not such a man, if he has the tender feelings

will the impulse to exertion be greatly strengthened by the knowledge that out of his labors a material part must be given to institutions which are privileged and powerful.

“Dives agris, dives positus in fœnore nummis.”

With such prospects, who will emulate the literary heroes of antiquity? What author will give himself up to the energies of his soul?

I will now inquire whether the delivery would operate as an oppressive tax, examine its operation on booksellers and authors, and consider its effects on literature in general. To discuss this question requires an acquaintance with the various customs which regulate the publication of books, and a knowledge of the necessary attendant expenses; on these points I am enabled to speak with confidence, where theorists can only make questionable assertions. It has been said that the privileges granted by the novel construction of the law

of a husband and a father; if, indeed, he has the conscience of a religious or moral man, will he not check every incentive arising from vanity, which would tempt him, for the purchase of an ill-bought fame, to expose to poverty and contempt those who, by the law of religion and nature, he is bound to cherish and protect?”—*Mrs. Macauley, Modest Plea for the Property of Copy-Right.*

are "*beneficial to the public, and little oppressive to any class or individual in the whole community.*"

The number of copies forming an edition of a book will average 500, but in costly and expensive works 250 may be generally rated as a fair calculation. The tax on the first would be $2\frac{1}{2}$ per cent. on the other $4\frac{3}{4}$. These certainly are considerable additions to the other necessary expenses, and in almost every case would be felt as severe impositions. It happens not unfrequently, however, that of the most valuable books not more than 50 or 100 copies are printed, and on such editions the tax, which before was only severe, becomes highly unjustifiable and oppressive.

The reasoning of Mr. Montagu on this point is plausible, but delusive and extremely incorrect. His remarks are in substance, *the various expenses for the mechanical parts being the same for one as for one thousand copies, they may be omitted in the estimate, and the expense of paper alone seems to be the chief amount of the tax.* The expense, I admit, is the same for setting the press for

¹ University of Glasgow's "Memorial, &c."

one as for a greater number. It is in the *press-work* and paper that the effect is most perceptible and most felt. From customs which have long existed, and which cannot now be readily altered, the expense of the *press-work* of 300 is the same as that of 500, and that of 780 as of 1000, the ratio of payment being for every 250 copies *worked*. From this we observe, that if a bookseller conceives he can find a sale for 250 copies of a book, and no more, his calculations will be materially affected by this delivery; if eleven more are struck off they must bear the cost of 250, besides the ink, paper, &c. for themselves; but if he prefers to subtract them from the first 250 he then absolutely loses the selling price of the eleven copies.

In works with *engravings* if the plates are plain, eleven copies only bear their proportion of the cost of engraving, paper, and printing; if they are colored (and in those books which treat of natural history, botany, and copies of eminent pictures it is required) then the expense of coloring, which is *very great*, must be computed for the eleven as well as for the other copies. As to the booksellers' profits and expense of advertisements, in requiring

these to be disregarded, Mr. Montagu must deem them unlike any other class of men.

Will this tax be oppressive? In answering this question affirmatively, I have the concurring sentiments of all the publishers; nor do I think it difficult to shew, that, as they speak from experience, they speak correctly. On all books that have an immediate sale, the eleven copies become a certain loss, equal to their selling price; where the sale is slow, but eventually complete, it is the same, but there is no case where the loss will not be considerably more than the cost of paper, ink, &c. To say, that “if all the copies of an edition are sold besides these, the author will receive a *sufficient remuneration* for his labor,” evinces an ungenerous, and, I believe, incorrect estimation of the literary character. It is synonymous with saying, *the price of his book is so much above the expenses incurred in the publication, that the subtraction of a material part of the receipts will not prevent his receiving a sufficient remuneration.*

The same writer observes, “if they are not

Monasticon, 1560; Pentateuchus Græcus, 1736.

** Minutes of Evidence.*

** Minutes of Evidence.* Mr. Christian, p. 8.

sold, the donation will then cost him nothing." By a custom among "the trade," and not generally known, this alternative is prevented. There are *trade-sales*, where all the copies remaining in the publisher's hands are disposed of to individuals of the profession, for one-half, or one-third of the selling prices (depending often on the number of copies offered for sale), but almost always for more than the prime cost. Suppose, then, out of an edition of 500 copies, 200 remain in the warehouse unsold: now, if eleven were delivered at the first publication of the work, is it not clear, that in making up the accounts at a trade-sale of these 200, they must be charged with the original or trade-sale price of the eleven? Most assuredly; and to say, therefore, the "donation will cost nothing," is to speak in contradiction to facts. Frequently, also, when a book has had none, or a very dull sale for several years, some particular event or circumstance transpires to give it an immediate sale; as books on Egypt were in no demand till the invasion

of that country by the French occasioned a sudden and extensive request for them.¹

It is also advanced, that “the expense (of giving eleven copies) seems altogether *insignificant, and would hardly be felt.*”²

In a statement made by Longman and Co. it would have been 5600*l.* for the last three years, averaging 1800*l.* per annum.³

Of White, Cochran, and Co. it would be 5289*l.* for the last twelve years; and this upon the “folios and quartos” alone, without including octavos and smaller books, or those in the publication of which they had only shares.⁴

Cadell and Davies, for the last four years, 1362*l.* of the small paper copies alone; and on the books now announced by them, the tax would amount to 1000*l.*⁵

¹ Evidence of Mr. Longman. Vide Min. of Ev. p. 4.

² Memorial of the University of Glasgow.

³ Vide Minutes of Evidence. From their catalogue for 1819, it appears they have at this time 120 different works in the press. The delivery would take from them 1320 copies. Among them are Lodge's Portraits, 1166*l.*; Dugdale's Monasticon, 1500*l.*; Pentateuchus Græcus, 693*l.*

⁴ Minutes of Evidence.

⁵ Minutes of Evidence, p. 26.

	£
On ten books to one publisher - - - - -	5698
On twelve by another - - - - -	2990
On Daniel's Oriental Scenery - - - - -	2310
On Sibthorpe's Flora Græca - - - - -	2500
On Rees' Cyclopædia - - - - -	1446
On the Encyclopedia Londinensis - - - - -	1496
On the British Gallery of Engravings - - - - -	1065
On Johnes' Froissart, and Monstrelet's Chronicles	1100

On those works published by myself, and in which I possess the copy-right and a share of the interest, the amount of the tax would be as follow :

	£	s.
On the Architectural Antiquities - - - - -	440	
On the Beauties of Wiltshire - - - - -	34	
On Salisbury Cathedral - - - - -	100	
On the Fine Arts of the English School - - - - -	122	
On Redcliffe Church - - - - -	17	7
On the Catalogue Raisonné of Cleveland House and Corsham House - - - - -	9	7
	£722	14

In stating the amount of these sums, I apprehend that no individual, who for a moment will imagine the case to be his own, can coincide in the idea that the presentation would *hardly be felt*, or that the epithet, "imaginary" is justly applicable to the degree of interest involved.

The amount of the tax being ascertained, the fact of its oppressiveness is, I think, an

evident consequence. The publishers derive no benefit whatever from the donation, and their only feeling on the matter is a certainty that their rights are invaded, and a conviction that the excuse adduced, is but insult super-added to injury.

It has been asserted that the grievance, if any, will be felt only slightly by the booksellers, and *by the authors not at all*. I conceive the testimony subjoined will at once answer and confute this remark.

“In engaging with an author, we certainly should take into consideration the eleven copies in our estimate, which would of course be likely to diminish the author’s profit;” and “in that case the author would be the injured party.” *Mr. Longman, Min. of Ev. p. 10.*

“An author has declared, though he has a work already in the press, and which he prints with a view to profit, if this legislative regulation should take place for the delivery of eleven copies, he will destroy what he has already printed, and suppress the work altogether.” *Mr. Mawman, ibid. p. 17.*

“The Author’s actual loss upon delivering eleven copies, of Lysons’ Roman Antiquities, would be the actual selling price of the work. It is the same with his Woodchester; and certainly Mr. Lysons has stated, that he would contest the point before he would deliver copies of his works; and if he felt himself bound to deliver them, it would prevent his publishing.” *J. G. Cochrane, ibid. p. 21.*

“I have been five years employing myself in printing a second edition of a work, (entitled, History and Antiquities of Hinckley, in Leicestershire,) and it is at this moment ready

for publication, but I will not publish it till this question is decided; and I shall be inclined rather to give them to my friends, than to sell them, if I must deliver these twelve copies." *John Nichols, ibid. p. 28.*

The following letter to his publisher, from the author of a valuable work on the History of English Coins, is not inapposite.

Sir,

"I have of late examined the public papers, with much impatience, to discover the determination of the House of Commons respecting the statute of the 8th of Anne; but in vain; and therefore presume that nothing is as yet resolved upon."

"That determination is of considerable importance to me, as upon it will depend *certainly* whether I shall print any large paper copies or not; and *possibly*, if my number of subscribers does not materially increase, whether I shall be able to print at all, with so serious a deduction, as that of eleven copies from a very small impression.

"———In this state of the public mind, I cannot venture to print more than 250 copies of my book, and I leave you to judge whether I can afford to give eleven, even of small paper, from so limited an impression.

"Sir, &c.

"Rogers Ruding."

Minutes of Evidence, p. 20.

These are only a few of the numberless instances which might be advanced in support of my argument. Whenever an author is the publisher of his own works, he stands in a similar situation with a bookseller. In cases where he disposes of his MS. to the latter, he will feel the tax equally sensibly;

for very naturally (as it appears by the fore-named testimony of Mr. Longman) they will be obliged to lessen their offers, an alternative which the experience of every author will tell us is far from desirable, and is making the "little, less."

To prevent this tax from being oppressive, we are told that the price of books should be increased in proportion. This, however, is not feasible. The present price of books is complained of by all literary men, and those publishers who are in the habit of exporting books to the continent of America, inform us, that their correspondents complain greatly of the high price of English publications. It is a well known fact, that in France the expense of valuable works is very little more than half the price of ours; and in America they are republishing all our standard books, at a less price, and almost equally well. If, then, the export trade is endangered by the existing prices, will it not be entirely ruined by making them still higher? In Great Britain it would be a fatal step. In all cases the sale would be materially diminished, and sometimes entirely prohibited. In either instance the sphere of information would be

contracted, and the sources of knowledge lessened. Thus it is clear a signal injury would be sustained by the public, the general improvement would be retarded, and, consequently the general welfare.

It is clearly proved, by the minutes of evidence already referred to, that many valuable and important books, "most calculated to advance knowledge," would have been withheld for ever, had their proprietors been subject to the *presentation tax*; that many others are at this moment delayed, and that the prospective operations of the newly-construed act must be injurious and paralysing to literature.

A chief argument of the claimants, when fully investigated, will be found to recoil on themselves: Mr. Montagu, Mr. Christian, and the University of Glasgow, contend that these public libraries are intended to foster genius, and provide *poor students* with the means of literary instruction; hence "many valuable contributions to science and the arts" have been made. Unfortunately for this argument, poor students—the *Sizars* of Cambridge, and

¹ University of Glasgow.

the *Servitors* of Oxford are not allowed to frequent and make use of the books in the public libraries;¹ these are only accessible to the *privileged few*: the greater part of whom are enabled to purchase books. Mr. Christian makes some strange assertions and contradictions on this point, which it may be proper to point out, to shew the badness of his cause. He says, the object of the act of the 8th of Anne, was to encourage learning in the universities, by “giving to the *students resident* in them the opportunity of becoming acquainted with every literary work, which could in any degree whatever contribute to the advancement of truth and science,” p. 28. In another page he asserts, “a very small proportion of the members *reside long enough* to derive much benefit from the public library,” p. 11. If the libraries were open to every student, as they unquestionably *ought to be*, and, under certain liberal regulations, were also accessible to the literati, and to all persons of research, there would be some appearance of justice and fairness in the demands now set up. Be-

¹ See Duppa's “Address,” published in the PAMPHLETER, No. III. p. 188

sides, if these institutions require all new books, are they not provided with ample funds to purchase them? Or, would it not sound better to the world were they to encourage authors instead of oppressing them? Mr. Christian admits that the sum of £400 per annum is enough to purchase every useful, or necessary book; but also asserts that the funds of Cambridge university are not adequate to this expenditure. Surely the professor must make some mistake, or mis-statement, on this point; for I am informed by a member of that university, that its funds are ample, and, indeed, very rich.¹ The profits of the printing presses alone at Oxford and at Cambridge are as much, if not more, than £400 per year; but these universities have also a certain fund (arising from taxing the students) set apart for the purchase of books, which fund for the last three or four years averaged annually at Oxford considerably more than £600.

In the faculty of Advocates at Edinburgh,

¹ About sixteen years back the funded property was above £30,000, which has been accumulating ever since. Let us therefore hear no more of want of funds!

every member pays, on passing, £200, half of which is paid into the library fund; supposing then that *only* four persons are admitted in one year, the necessary £400 is obtained.

At the university of Edinburgh there are from 12 to 1400 students annually, who pay a matriculation-fee to the library fund, which certainly in addition to the sums paid by the professors, on taking the chair, will amount to a considerable sum.

Trinity College, Dublin, has long been in the habit of purchasing whatever books are required; and the University of Glasgow admit they have resources to purchase such *foreign* publications as are needful, though they talk of inability to procure the valuable productions of their *own country*.—Strange patriotism!

The Russell, London, and Surry Institutions; the Liverpool, Manchester, and Bristol Public Libraries furnish themselves with almost every new publication; besides, these institutions labor under the disadvantage of having to commence as well as complete their collections, whilst the others are already possessed of large libraries both in print and

manuscripts. Why then may they not with equal justice advance their claim for *presentation* copies? Being open to the public, a greater benefit is derived from them, and therefore more cogent reasons exist why they should be privileged, at least as much if not more than those institutions which are shut not only to the public, but even against the majority of their own members.

The various, great, and peculiar advantages at present possessed by the universities is a principal reason, amongst others, why the copies should not be *given*.

They have a copy-right for ever in all books bequeathed, or fairly obtained by them:—they have, in common with the king's printers, the exclusive right of printing statutes, bibles, and prayer-books, and an exemption from the duties on the paper used for these and all other books printed at their presses. They have, however, the sum of £500 per annum paid to them by government, to assist in defraying the expense of printing. These are very important privileges, not one of which is given to publishers; but, on the contrary, the latter are already subjected to numerous and heavy taxations. The exclusive power

of printing bibles and prayer-books is profitable in the extreme; so much so, that the university presses have been scarcely able to supply the great requisition for them. This is a *monopoly to the entire exclusion* of publishers, and *in no other country* does any such monopoly exist.¹

By these numerous privileges the universities are enabled to undersell, with greater profit, the professed publishers. Though the act, which gives them this perpetuity of copyright, required their books to be entered at Stationers' Hall, and subjected the universities to all the regulations imposed upon the professional publishers; yet they have very seldom, if ever, complied with its directions;

¹ The speech of Bishop Shipley, in the House of Lords, has been quoted by Mr. Montagu, to strengthen his positions: I also will make use of his Lordship's sentiments in support of my own.—“ I believe the most arbitrary government was never so unwise as to give a perpetual monopoly of any kind to one man and his heirs. But to vest in one particular set of men, an hereditary and indefeasible monopoly in the works of genius and literature; in the books of morals, science, and religion; in all useful and elegant compositions; this, my Lords, could not be the work of law or of nature, or it must be a strange *lusus naturæ*, the wildest prank that nature ever played.”

although *they* require them to be rigidly observed by others.

From what has been advanced, it is conceived that the unprejudiced and disinterested reader will be enabled to form a clear and explicit opinion on the question at issue between public libraries and authors ; and that he will also feel disposed to protect the weak against the tyranny of the strong ; that he will espouse the cause of mental exertion, and advocate the petitions of the literati. I think it is plainly proved that the tax on authors and publishers, as pointed out by the act of Queen Anne, and rendered imperious by the recent decision of the judges, is *cruel, oppressive, and unjust* ; that if enforced, and fully acted upon, it must materially harass and distress every author, and must also levy a contribution on all purchasers of books. It may also be safely asserted, that the literary character is entitled to expect some lenity and indulgence from the English legislature, and that the present state of society, and of the publishing profession, is essentially and palpably different from what they were at the commencement of the last century. It is

therefore highly proper and expedient that laws should be adapted to the times ; and the authors look forward, most anxiously, for the result of a new bill, which is to be introduced into the House of Commons.

“ We must take care,” said *Lord Mansfield*, in the case of *Sayer and Moore*, “ to guard against two extremes equally prejudicial ; the one that men of ability, who have employed their time for the service of the community, have their just merits, and the reward of their ingenuity and labors ; the other, that the world may not be deprived of improvements, nor the progress of the arts be retarded.” *Dr. Johnson*, also says,

“ It will sound oddly to posterity, that in a polite nation, in an enlightened age, under the direction of the most wise, the most learned, the most generous encouragers of knowledge in the world, the property of a mechanic is better secured than that of a scholar ! that the poorest manual operations should be more valued than the noblest products of the brain ! that it should be felony to rob a cobbler of a pair of shoes, and no crime to deprive the best author of his whole subsistence.”—*Life of J. Phillips.*

I have been unexpectedly impelled to extend these observations much farther than I anticipated, or wished ; but the more fully and minutely I considered the subject, the more urgent it appeared. I am therefore particularly anxious to excite the same feeling in those persons who are the guardians of our laws and rights ; and who, I am persuaded, are always disposed to act honestly and honorably. To such therefore I submit with cheerfulness and confidence : my demands, or rather intreaties, are humble, and I believe equitable :—to abrogate the law of Queen Anne, and all other Acts respecting copy-right ; and to frame another statute on the broad and permanent basis of equity, liberality, and justice.

“ Poise the cause in Justice’s equal scales,

“ Whose beam stands sure, whose rightful cause prevails.”

SHAKSPEARE, 2 HENRY VI.

APPENDIX.

THE following Letter by the Printer of this Pamphlet was intended to be addressed directly to certain Members of Parliament: but it is subjoined to the present Essay, as another instance, in addition to those already related, of the paralyzing effects of the
Presentation Tax.

To

_____, M. P.

SIR,

As the question respecting the delivery to the Public Libraries of eleven copies of every work, which issues from the press, has been now for some time agitated between the different parties, and will probably be placed, at no remote period, in a train of final adjustment, I take the liberty of addressing you, as a Member of the Legislature, and of submitting a few considerations in regard to the influence of the claim on the progress of *Stephens' Greek Thesaurus*, of which I have announced a new edition. When I first contemplated that project, the libraries had not advanced that claim which has excited so general an interest in the literary world; and having already incurred very heavy expenses, I was compelled to suspend the publication, until the controversy should be decided. That I had sufficient

reason for this procedure, I think you will readily acknowledge, when I state that the presentation of eleven copies, even on small paper, would be attended with a cost of above £300 to me. It must be obvious that no Public Library should be unprovided with a copy of a work so important in classic literature: if any such library does not possess it, the deficiency ought certainly to be supplied, without resorting to the favorable chance of a gratuitous acquisition; and if the old edition was already in the library, there could be no absolute occasion for demanding a copy of the new, as a matter of mere utility. But should the claim be conceded by the Legislature, I must not only be subjected to the expense of the copies, but incur the loss of the sale of, perhaps, an equal number. The cost of the work could not be such an object to a public body, endowed with funds for the purchase of books, as it unquestionably is to the limited property of a private individual. The British Museum is, indeed, without funds; and therefore the end of the act to establish a National Library, if it must be contended that such an end was in view, would be, I humbly presume to suggest, more properly fulfilled by presenting a copy of every publication to that library alone. I shall conclude by submitting the interests of publishers in general, and of myself among the rest, to your unbiassed judgment; and by requesting your attention to Nos. III. and IV. of the PAMPHLETEER, in which the subject is ably argued.

I have the honor to be, &c.

A

CATALOGUE OF TRACTS

CONCERNING

Literary Property, &c.

*With their Titles, Nature, and Date of
Publication.*

1. A Letter to the society of booksellers, on the method of forming a judgment of the manuscripts of authors.—*Printed for Millar, 1738.*

2. Letter to a Member of Parliament, concerning Literary Property. — *Printed for Knapton, 1747, 8vo. 6d.* Bishop Warburton was the writer. It was in favor of the right of authors to a property in their works; "penned with such peculiar strength and spirit as evidently displays the hand of a master."—*Vide Monthly Review, Old Series, vol. xxvii. page 73.*

3. The case of authors by profession, stated with regard to booksellers, the stage, and the public, no matter by whom, (*said to be by Mr. Ralph,*) *printed for Griffiths, 1758.*

4. Enquiry into the nature and origin of Literary Property, *printed for Flexney*, 1762, 8vo. 1s. "An ingenious and well written pamphlet, endeavouring to prove that literary productions are not susceptible of property."—*Vide M. Rev.* xxvii. p. 73. The writer enters very deeply into matters of law, and discovers great acuteness and controversial skill throughout the whole of the argument.

5. A vindication of the exclusive rights of authors to their own works; a subject now under consideration before the twelve judges of England, 8vo. 1s. *Griffiths*, 1763.

6. A long and ingenious dissertation on Literary Property will be found in the *Monthly Review*, vol. xxvii. page 176, year 1763. It is decidedly in favor of authors.

7. Some thoughts on the state of Literary Property, humbly submitted to the consideration of the public.—*Printed for Donaldson*, 1764.

8. Considerations on the nature and origin of Literary Property; wherein that species of property is clearly proved to subsist no longer than for the terms fixed by the statute 8th of Anne, 8vo. 1767.—*Printed by Donaldson, Edinburgh*. See note in preface.

9. In the *Monthly Review, Old Series*, vol. xlviii. p. 51. will be found an essay in favor of Literary Property.

10. Burrows' Report on the question of Literary Property, *Millar v. Taylor*, 1769, when it was decided in favor of the plaintiff, with the opinion of the judges, and the reasons given by each in support of his opinion; *to be found either in the 4th vol. Burrows' Reports, or in 4to. printed by Strahan and Woodfall*, 1773. *M. Review*, vol. li. page 83.

The points discussed in this case are, whether an author has a copy-right by common law, and if so, whether it is taken away or restrained by the 8th of Anne. Justices Aston, Willes, and Mansfield contended for the common law right, and that it was not affected by the statute of Anne. Mr. Justice Yates alone dissented from this opinion of the court.

11. Observations concerning Literary Property, *supposed to be by Bishop Edward Law, printed by Archdeacon, 1770, 8vo.* In favor of the universities, but extremely vague, with no definite object, unless to attack booksellers.

12. Boswell's Report of the decision of the court of session, (*Scotland*) upon the cause of Literary Property, *Hinton v. Donaldson et al. 4to. 2s. sold by Donaldson, 1773.* "In this report the arguments of Lords Kaimes, Coalstone, Auchinleck, and Hailes, deny the right of authors to a property in their works, but Lord Monboddo completely refutes their positions."---M. Rev. vol. li. p. 90.

13. Pleadings of counsel before the House of Lords, in the great cause of Literary Property, together with the opinion of the learned judges on the common law right of authors and booksellers, 4to. 1s. *Wilkins, 1774.* M. Rev. vol. li. p. 202. says of it, "It bears evident marks of being compiled by some illiterate hand from newspaper memorials."

14. The cases of the appellants and respondents in the cause of Literary Property, before the House of Lords, with notes and references, and observations by a gentleman of the Inner Temple, 4to. 2s. 6d. *Bew, 1774.* M. Rev. vol. li. p. 202. "In this we have the various speeches of the lords, and the arguments of the counsel tolerably well reported."

15. Argument in defence of Literary Property, by Francis Hargrave, Esq. 8vo. 1s. 6d. Otridge, 1774; in favor of authors. The M. Rev. vol. li. p. 209. says, "Mr. Hargrave's ingenious argument is not only written with great clearness of thought and expression, but enters into a full investigation of several parts of the subject, and suggests some new and important ideas which merit attention."

16. A modest plea for the property of copy-right, by Catherine Macaulay, 8vo. 1s. 6d. Dilly, 1774. M. Rev. vol. li. p. 272, says, "We find the subject treated with much good sense and rectitude of discernment." The authoress does not enter into an examination of the law, but discusses the question on the grounds of reason and justice.

17. Address to the artists and manufacturers of Great Britain, to which is added strictures on the late decision concerning Literary Property. W. Kenrick, LL. D. 4to. 2s. Denville, 1774; a review of it, M. Rev. vol. li. p. 280. "The writer would place artists and authors on the same footing, with respect to property in inventions and compositions, and declares that the first are as much entitled to exclusive and legal property as the others."

18. Act for the relief of booksellers and others, 1774.

19. Observations on Literary Property, by Wm. Enfield, LL. D. 4to. 2s. Johnson, 1774; decidedly in favor of Literary Property, and powerfully written. M. Rev. vol. li. p. 358. The arguments of the learned author are irrefragable, and establish the right of copy as clearly as it was possible for reason to do.

20. An essay on Literary Property. Gent. Mag. Old Series, vol. xxxvii. p. 295.

21. Enquiries respecting the University Library, by Basil Montagu, Esq. 8vo. *printed by Hodson, Cambridge, 1805.* Little more than queries addressed to the Universities, for the purpose of inciting them to demand copies of all works registered or not at Stationers' Hall.

22. Vindication of the rights of the university to a copy of every new publication, by Edward Christian, Esq. Chief Justice of, &c. &c. 8vo. *printed at the University Press, 1807.* The object of this pamphlet is similar to that of the preceding. Mr. Christian enters into a minute examination of the laws on the subject, and infers, *what he terms*, a clear and undeniable right in the Universities to the copies.

23. Acts relating to copy-right in books; containing the statutes of 8th of Anne, 15 and 41 Geo. III. 8vo. *printed 1812.*

24. The case stated between the public libraries and the booksellers, 8vo. *printed by Moyes, 1813,* written by Mr. Cochrane, a respectable bookseller of Fleet-street: a clear statement of the *case* in dispute; replete with pertinent remark and correct reasoning.

25. An address to the Parliament of Great Britain, on the claim of authors to their own copy-right, by a member of the University of Cambridge, 8vo. 1813, *by Richard Duppa, LL. B.*

The writer attempts to prove the indisputable right of authors to a perpetuity of copy-right. He also adverts to the observations of *Mr. Christian*, concerning the delivery of the required eleven copies. Mr. Duppa was applied to by the committee of the House of Commons, "to give his opinion on the best mode that could be adopted *to relieve authors from their present oppression*; but at the same time

was given to understand that the Universities," (i. e. the University of Cambridge, or its *official adviser*) "would yield up no part of their claim, as obtained by the judgment of the court of King's Bench." Mr. D. thinks the most effective plan will be to institute an ACADEMY OF BELLES LETTRES, towards the founding of which he very liberally offers to give £100. An institution of this sort has often been contemplated by myself, as an important national object, and I have partly matured a plan on a very large scale, which, if leisure and health permit, I shall submit to the public at a future period.

26. Enquiries concerning the proposed alteration of the law of copy-right, as it affects authors and the Universities, by Basil Montagu, Esq. 8vo. 1813, *Butterworth*. This proceeds on the same grounds as Mr. M.'s preceding pamphlet of 1805, and contains various quotations from different speeches and decisions, tending to establish his point.

27. Heads of a bill to amend the act of Anne, by securing the copies and copy-rights of printed books to the authors of such books, or their assigns, 1813.

28. Minutes of evidence taken before the Committee on the acts respecting copy-right of printed books, July 26, 1813.

29. Memorial of the University of Glasgow against the petition of the booksellers, 1812, setting forth their reasons, why the privilege of the eleven copies should be still extended to them, by James Couper, Vice Rector. A very flimsy and invidious production.

30. The present circumstances of Literary Property, considered in a letter to a Member of Parliament, by Thos. Fisher, 8vo. 1813, appended to the *Gents. Magazine*, for Nov. 1813, *Nichols and Son*.

31. Booksellers' account of the expense of correcting and improving sundry books, (*not known.*)

32. Considerations in behalf of booksellers, (*not known.*).

33. Letters patent granted to the company of Stationers. *Printed by R. Nutt, 1741.* This pamphlet relates more particularly to some disagreement between the members of the company, but in the course of the examination of the charters, considerable light is thrown on the subject of the entry and right to print.

34. List of books printed by the booksellers, with the number of years an impression of each is selling, (*not known.*).

35. Reasons for a modification of the act of Anne, respecting the delivery of books and copy-right, *printed by Nichols and Son, 1813.* A very liberal, luminous, and well written essay: in which is displayed a familiar knowledge of the laws and arguments on the case; and would have superseded the necessity of the present appeal, had it been *published* in the name of a known author.

The Tracts marked 24 and 25 are recorded in Nos. III. and IV. of the PAMPHLETEER.

THE END.

31. Bookellers' account of the expense of correcting and
improving ready books (not known)

32. Considerations in behalf of bookellers (not known)

33. Letters patent granted to the company of Stationers.
Printed by R. Wall 1741. This pamphlet relates more
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specting the delivery of books and copy-right printed by
Nichols and Son 1812. A very liberal, luminous, and well
written essay: in which is displayed a familiar knowledge of
the law and arguments on the case; and would have super-
seded the necessity of the present report, had it been pub-
lished in the name of a known author.

The Tracts numbered 28 and 29 are recorded in Nos.

III and IV of the PARLIAMENT.

THE END



Britton, John

The Rights of Literature

London 1814

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